



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

June 7, 2023

Re: FOIA Request No. NLRB-2023-001514

Dear Tien Nguyen (Time and a Half):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on May 30, 2023, in which you seek “The Signed Charge Against Employer filed on 05/23/2023, and the Initial Letter to Charged Party, dated 05/26/2023” in *IHG Management (Maryland) LLC d/b/a Intercontinental Washington D.C. - the Wharf*, Case No. 05-CA-318871. You did not assume financial responsibility for the processing of your request, but you requested a waiver of fees.

We acknowledged your request on May 30, 2023.

Your request is denied in part and granted in part, as explained below.

A search of the Agency’s electronic casehandling system, NxGen, has been conducted. This search has located seven pages of responsive, releasable records from the requested case file, which are attached.

After a review, I have determined that certain information in the attached records is exempt from disclosure under Exemptions 6 and 7(C) of the FOIA (5 U.S.C. § 552(b)(6) and (b)(7)(C)). Specifically, redactions have been made to protect the privacy interests of individuals named in the records. These redactions were made pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy; and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

Regarding the withheld records, four pages of exhibit attachments, consisting of an inactive web site and a review, are being withheld in full pursuant to FOIA Exemption 7(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with a pending enforcement proceeding. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978).

In the instant matter, the exhibits are investigatory records in an open case pending investigation in the regional office. Given the open status of 05-CA-318871, premature release of submissions by a party may adversely impact ongoing investigation proceedings. Therefore, given the open status of the requested case pending before the Region, the investigatory records in the case file are being withheld in full at this time pursuant to Exemption 7(A).

Please note that Exemption 7(A) protection is “temporal in nature.” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Justice*, 746 F.3d 1082, 1097 (D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). As such, these and other case file records may become disclosable, subject to applicable exemptions, after the case closes, that is, once a Board decision and/or court order issues, there has been full compliance with a settlement, or the case has otherwise been closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of this case can be tracked on the Agency website at www.nlr.gov by going to the Cases & Decisions tab, clicking case search, entering the case number in the search box and viewing the case page or by clicking the link here: <https://www.nlr.gov/case/05-CA-318871>.

For the purpose of assessing fees, we have placed you in Category C, as a representative of the news media, in that you qualify as a person “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vii). Accordingly, there is no charge assessed for this request. Given your placement as a news media requester, your request for a fee waiver is moot.

You may contact Joseph Mullaney, the Attorney-Advisor who processed your request, at (202) 273-3863 or by email at Joseph.Mullaney@nlrb.gov, as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency’s FOIA Public Liaison is:

Kristine M. Minami, FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nlrb.gov
Telephone: (202) 273-0902

Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448 Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at:
<https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt, Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nrlrb.gov

Any appeal must be postmarked or electronically submitted within 90 days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling
FOIA Officer

Attachment: (seven pages)